

**UNITED STATES BANKRUPTCY APPELLATE PANEL  
OF THE TENTH CIRCUIT**

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IN RE MARSHA McQUARRIE LANG,  
also known as Marsha Lang,  
also known as Marsha M. Lang,  
  
Debtor.

BAP No. UT-03-070

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ROBERT F. LANG, M.D.,  
  
Plaintiff – Appellee,  
  
v.  
  
MARSHA McQUARRIE LANG,  
  
Defendant – Appellant.

Bankr. No. 93T-25329  
Adv. No. 94PT-02025  
Chapter 7

ORDER DISMISSING APPEAL  
April 12, 2004

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Before McFEELEY, Chief Judge, MICHAEL, and NUGENT, Bankruptcy Judges.

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The matter before the Court is the Answer to Order to Show Cause Why Appeal Should Not Be Considered for Dismissal as Untimely (“OSC Answer”), filed March 30, 2004, by the Defendant – Appellant. The Plaintiff – Appellee filed a response to the OSC Answer on April 9, 2004.

**Background**

On August 14, 2003, the bankruptcy court entered its Final Order and Judgment, accompanied by a Memorandum Decision and Order on Remand from the Tenth Circuit Bankruptcy Appellate Panel. On August 19, 2003, apparently *sua sponte*, the bankruptcy court entered an Amended Memorandum Decision and Order on Remand from the Tenth Circuit Bankruptcy Appellate Panel. It does not appear that the bankruptcy court amended its Final Order and Judgment. The Defendant – Appellant’s notice of appeal was filed on August 29, 2003.

By Order entered October 8, 2003, this Court found that the August 14,

2003, bankruptcy court decision was a final order, that the August 19, 2003, bankruptcy court order did not extend the time to file a notice of appeal, and that the Defendant – Appellant’s notice of appeal was not timely filed. That Order dismissed the appeal for lack of jurisdiction.

In a timely-filed motion for rehearing, the Defendant – Appellant represented that she had sought from the bankruptcy court an extension of time to file her notice of appeal under Fed. R. Bankr. P. 8002(c), that the bankruptcy court erred in denying the extension of time, and that she had filed a separate appeal of the bankruptcy court’s order denying the extension of time. By Order entered October 10, 2003, this Court reopened the appeal and stayed all proceedings pending resolution of the appeal of the order denying the extension of time, which was assigned case number UT-03-081.

On March 15, 2004, in case number UT-03-081, this Court affirmed the bankruptcy court’s order denying the extension of time. The Defendant – Appellant has appealed that decision to the Tenth Circuit Court of Appeals.

On March 15, 2004, this Court issued an order to show cause why this appeal should not be dismissed as untimely. The Defendant – Appellant timely filed the OSC Answer.

### **Discussion**

The OSC Answer asserts that the bankruptcy court erred when it denied the Defendant – Appellant’s request for an extension of time to file her notice of appeal. That assertion is contrary to the decision in case number UT-03-081. One panel of this Court cannot overrule another panel of this Court. *Blagg v. Miller (In re Blagg)*, 223 B.R. 795, 804 (10th Cir. BAP 1998). This Court must therefore conclude that the bankruptcy court did not err in denying the extension of time.

Because the notice of appeal was not filed within the time period allowed by Fed. R. Bankr. P. 8002(a), and the time to file the notice of appeal was not

extended by the bankruptcy court under Fed. R. Bankr. P. 8002(c), the appeal must be dismissed for lack of jurisdiction. *Deyhimy v. Rupp (In re Herwit)*, 970 F.2d 709, 710 (10th Cir. 1992); *Furst v. Furst (In re Furst)*, 206 B.R. 979, 980 (10th Cir. BAP 1997).

### **Conclusion**

Accordingly, it is HEREBY ORDERED that this appeal is DISMISSED.

For the Panel:

Barbara A. Schermerhorn, Clerk of Court

By:   
Deputy Clerk